



City and County Real Estate Leases: Review of Process and Policies

*City-County Council – Regional Operations Center Investigating
Committee*

*Presented by the Office of Corporation Counsel and the Office of
Finance and Management*

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Focus Points



- Review current laws that govern leases
- Focus on laws, policies and procedures when the city/county is the lessee
- Define the current role of the agency, OFM, OCC, Space Allocation Working Group and the Council
- Suggest potential changes to lease policies and procedures

Indiana State Law



- Indiana Code 36-1-10 governs leases at the local level
- Provides for the process and policies regarding a political subdivision as the lessee
- Sets forth who the political subdivision may lease from, the term of the lease, process for lease approvals, funding of leases, etc.
 - Regarding who may lease, the law states the leasing agent (IC 36-1-10-2) is the entity which has the power to lease structures
 - A leasing agent is defined as “the board or officer of a political subdivision or agency with the power to lease structures.”
- Includes leases with and without an option to purchase at the end of the lease
- *Indiana Code 36-1-11 applies when the political subdivision is the lessor*

Details of IC 36-1-10



- A leasing agent may lease from a profit or not-for-profit organization, a partnership, association, limited liability company, or a firm or an individual
- Leases without an option to purchase must include a termination for failure of funding clause
- Leases without an option to purchase can be signed for up to 10 years, anything longer must be approved by the Department of Local Government Finance
- Leases with an option to purchase can be up to 50 years

Details of IC 36-1-10 Cont.



- The leasing agent **may lease the structure only if:**
 - It has received a petition signed by 50 or more taxpayers of the political subdivision and,
 - The fiscal body of the political subdivision has determined that there is a need to lease space
- Once lessor and the leasing agent have gained approval from the fiscal body and acquired the necessary taxpayer signatures, lease negotiations may commence
- Once lease terms are reached, but before the lease is executed, a public hearing must be held by the leasing agent
- Notice requirements for the public hearing are set forth in the law as to what should be provided at the public hearings, the timeframe for such hearings, etc.
 - Includes summary of the lease terms, name of proposed lessor, location of the structure, the rental to be paid, term of the lease, and other information
- Modifications and changes may be made to the lease after the public hearing, but the rental amount cannot be increased above the amount published in the notification

Details of IC 36-1-10 Cont.



- Once public hearing is completed and adjustments are made (if necessary), the leasing agent and the lessor may execute the lease
- Upon execution of the lease (as originally agreed upon or modified), the leasing agent shall give notice of execution of the lease by publication in accordance with IC 5-3-1
- If any of the lease payments are made from property taxes, in whole or part, 10 or more taxpayers who disagree with the execution of the lease may file a petition with the County Auditor within 30 days after the publication of notice of the executed lease
- The County Auditor shall immediately certify a copy of the petition and other information to the Department of Local Government Finance, who shall then fix a date and time for a hearing within no less than 5 days and no more than 30 days after the receipt of the documents
- Decisions by the Department of Local Government Finance are final



Local Code on Leases

- Current city/county Revised Code provides procedures and policies regarding situations where the city/county is the lessor, but is limited in regarding to situations where the city is the lessee
- Revised Code Chapter 186 relates to property disposal and leasing property to other entities
- Review and approval where the city/county is the lessee is limited to the requirements in IC 36-1-10 and requirements in the Revised Code
- Currently, Revised Code 141-101/102, 202-103 and individual board authority govern review and approval requirements for agency leases beyond those required by state law.

Space Allocation Cmte



- Created by Executive Order in 1979
- Rescinded in 1992
- Role of the SAC was to:
 - Devise and propose workable solutions to the increased need for usable office space in the city-county building,
 - Make recommendations concerning the allocation of space
 - Seek more available parking under the management of the Building Authority
 - Review present allocation and use of building storage space
 - Review present allocation of parking
 - Review and revise prior professional space needs studies of the city-county building
- The committee consisted of 11 members appointed by the Mayor and included individuals from the Council, Courts, County Commissioners, etc.

Space Allocation Cmte. Cont.



- Even though SAC was rescinded in 1992, a group of individuals focused on space allocation and resources has been meeting at the request of the Real Estate Manager and as space needs arise
- The working group closely resembles the make up of the SAC created in 1979, but has no legal authority or decision making power
- As city/county agencies or departments negotiate lease agreements or seek new space, it is possible they may approach the current space allocation working group to seek advice on the need for space, lease agreements or other space concerns

Real Estate Manager



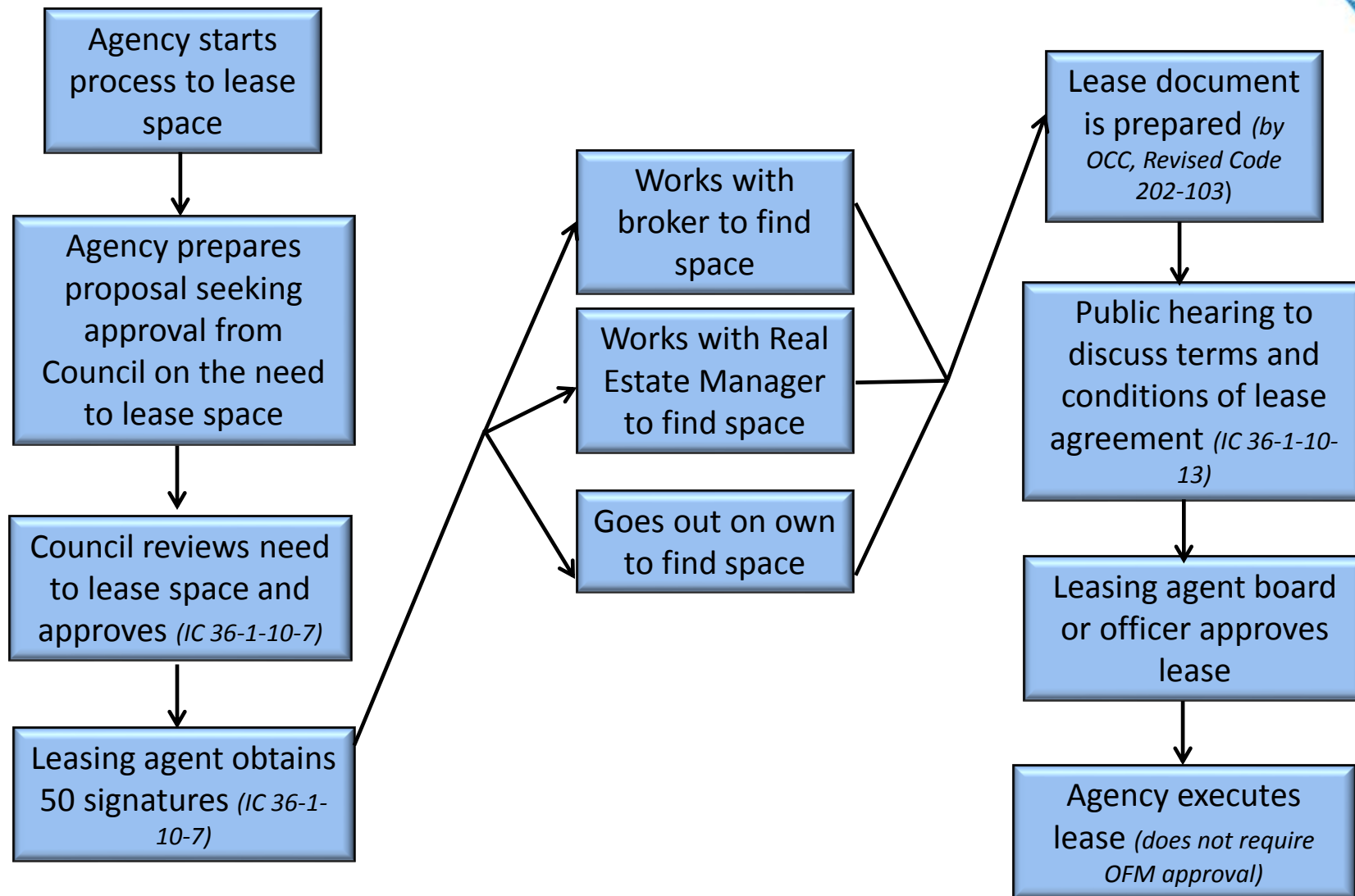
- Real Estate Manager position in OFM focuses on the management of real estate owned or leased by the city/county
- Position was created to coordinate city/county real estate/property from an enterprise wide prospective
- Works with city and county agencies/departments and the Building Authority on real estate issues, leases and property management
- The Manager can, if requested, serve as a broker and negotiator for city and county agencies/departments when working through leases with landlords
- Currently the position leads the space allocation working group

Departments/Agencies



- City/County departments and agencies (leasing agents) start the process of leasing space
- Proposals are filed by departments and agencies with the Council to seek approval for the need to lease space and signatures are acquired from taxpayers
 - Need to lease proposals can be filed without the knowledge of OFM and OCC
- Departments and agencies then can work with an outside broker, the Real Estate Manager or on their own to identify space, discuss terms and conditions and start the process of creating a lease document
- By law (Revised Code Chapter 202-103) agencies and departments must use OCC to prepare lease documents, but its possible these documents are prepared by outside entities without OCC review
- Agencies must then follow the requirements of IC 36-1-10 to execute the lease agreement

Lease Process Example



Concerns with Current Process



- Revised Code Chapters 141-101 and 141-102 do not specifically note “leases”. Therefore OFM and OCC may not be involved in any lease discussions in the beginning and may not be included in the review and approval process
- Revised Code Chapter 202-103 requires OCC to prepare leases. In some cases agencies/departments may have brokers or their own attorneys draft lease agreements, thereby circumventing OCC review
- By not requiring OCC and OFM to review and approve leases creates the ability for agencies/departments to enter into leases without legal or financial review, which can result in inconsistent terms and failure to comply with state and local law
- In some cases, agencies/departments have included OFM, OCC and the space allocation working group in lease discussions and options before approaching Council for approval, e.g. Public Defender lease in 2013

Concerns with Current Process Cont.



- In IC 36-1-10-13 it notes “the leasing agent” shall hold public hearings and provide information on lease agreements. The “leasing agent” means the board or officer of a political subdivision or agency with the power to lease structures.
- Role of the Council in reviewing leases is specific in the law. IC 36-1-10-7 notes “the fiscal body of the political subdivision determines, after investigation, that the structure ... is needed”
- The space allocation working group is not mandatory when reviewing and approving leases before they are sent to Council. The space allocation working group can be a resource to agencies/departments, OCC and OFM when dealing with leases

Recommendations



After review by OFM and OCC, the Committee should consider the following recommendations to ensure leases are reviewed and approved by appropriate entities and that state and local laws are followed appropriately

Recommendation 1



- Amend the Revised Code Chapter 141-101 so that both sections a (city) and b (county) expand the definition of a “contract” to include any leases, legally binding agreements, memorandums of understanding, inter-local agreements, or any other legally binding agreement
- This would require any type of legally binding agreement to be reviewed and approved by OFM and OCC, including all leases or agreements to lease space or structures

Recommendation 2



- Create in Revised Code a Space Allocation Committee
- The structure of the Committee could include entities like OCC, OFM, the Building Authority, the Council and other entities that review space needs and are involved in the review of changes in space allocation
- The Committee could be required to review lease and space needs and make recommendations to the Council on the need to lease space as required by IC 36-1-10-7
- The Committee could assist the leasing agents in carrying out the requirements under IC 36-1-10-13 regarding public hearings on leases

Recommendation 3



- Use the Real Estate Manager to manage the lease process
- As agencies/departments start the process to lease space, the Real Estate Manager should be the first person to start the process
- If the Real Estate Manager serves as the Chair of the Space Allocation Committee, the individual would be able to oversee lease transactions from start to finish, working with the agency/department, OFM, OCC, Council, the public and landlords
- Require, as policy, that agencies/departments initiate discussions with the Real Estate Manager when the need to lease space, renew leases or have lease questions occurs

Recommendation 4



- Establish a process and policy for review and approval of leases
- OFM, OCC and the Council should develop a process and policy document that dictates how city/county agencies/departments should proceed when seeking to lease space
- The process and policy should include the requirements set forth in IC 36-1-10 and Revised Code Chapters 141-102 and 202-103, the Space Allocation Committee and the Real Estate Manager
- A step by step process, along with required review and approvals before a lease can be executed, will allow agencies, the Council and the public to be informed on the process regarding lease approvals

Recommendation 5



- Clearly define the role of each entity required to review and approve leases
- OFM and OCC's role is to review for legal and financial purposes
- Agency/Departments role is to request the need to lease space and work with various entities to seek approval to lease space
- SAC's role could be conduct public hearings on leases, review and approve lease and space needs, and make recommendations to the Council regarding the need to lease space
- Council's role would be to determine the need to lease space
- These roles could be laid out in the policy and process noted in Recommendation 4

Attachments



- Revised Code 141-101 and 141-102
- Revised Code 202-101 through 103
- Indiana Code 36-1-10
- Executive Order No. 3, 1979
- Rescinding various Executive Orders, 1992